IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1297 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAJULABEN RAJUBHAI RATHOD - Applicant(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR.B K.RAJ for Applicant(s) : 1,
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/07/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner – original

complainant has prayed for an appropriate order to transfer the investigation of the complaint being M Case No. 1/2007 registered with Dabhoi Police Station, Vadodara.

2. It appears from the record that the petitioner has filed a private complaint in the Court of learned JMFC, Dabhoi against the original accused – Jaggi alias Jagdish Kantibhai Rathod and others for the offence under section 302 r.w. section 114 of the IPC for the untimely death of his son - Pravin Rajubhai Rathod. It also appears from the record that in the said complaint the learned JMFC, Dabhoi has by order dated 8.2.2007 passed an order of inquiry by the concerned Police Officer under section 156(3) of the Cr.P.C. It is the contention on behalf of the petitioner that the investigation has not been carried out in proper manner and right direction. It is also further submitted by Shri Raj, learned advocate appearing for the petitioner that though the I.O. was required to submit the report within a period of 60 days

from 8.2.2007, no such report was submitted and an application for extension was filed and therefore, it is requested to transfer the investigation.

3. Shri M.R.Mengde, learned APP under the instruction of one Shri K.K.Koli, A.S.I., Dabhoi Police Station has submitted that the inquiry is already concluded by the I.O. and appropriate report is already sent to the concerned Court and according to the I.O., it is a case of B summary.

4. Now, in view of the fact that the I.O. has already submitted the report after inquiry before the learned Magistrate, it is ultimately for the learned Magistrate to consider the same and to accept the same or not. It is also to be noted that the petitioner being complainant will also be heard by the learned JMFC at the time of considering the report submitted by the I.O. Under the circumstances, petitioner is relegated to approach the learned JMFC by submitting his

objections and even he may pray for further investigation if the petitioner is not satisfied and as and when such an application is made, the same shall be considered by the learned JMFC in accordance with law and on its own merits. It is required to be noted that as held by the Hon'ble Supreme Court in catena of decisions, the learned JMFC is not bound to accept the report submitted by the I.O. and an independent decision is to be taken by the learned JMFC while considering the said report.

5. With these, present petition is disposed of. Notice discharged.

(M.R.Shah, J.)

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